

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRENDAN BERNICKER,

Plaintiff,

v.

NATIONAL SECURITY AGENCY,

Defendant.

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CIVIL ACTION NO. 18-1243

FILED

JUN 27 2018

KATE BARKMAN, Clerk
By _____ Dep. Clerk

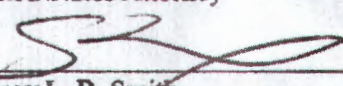
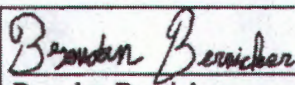
STIPULATED ORDER

1. Plaintiff's Complaint is brought pursuant to the Freedom of Information Act, ("FOIA"), 5 U.S.C. § 552 *et. seq.*
2. The United States Attorney's Office accepted service of the Complaint on April 2, 2018.
3. As part of an effort to resolve this matter amicably, the parties hereby STIPULATE AND AGREE to the following.
4. Plaintiff has reasonably modified the scope of his FOIA Request, as set forth herein, when provided with an opportunity to do so by defendant. This modification will not change the date on which Defendant shall be considered to have received plaintiff's FOIA Request, which shall remain May 1, 2017.
5. Plaintiff requests that the defendant search for and produce any advisory opinions, memoranda, emails, instructional materials, policy statements, white papers, or similar documents prepared by or for the employees/contractors of the NSA/CSS, or within the possession of NSA/CSS employees/contractors or the agency itself, created between August 1999 and February 2006, related to or describing legal or technical interpretations of:

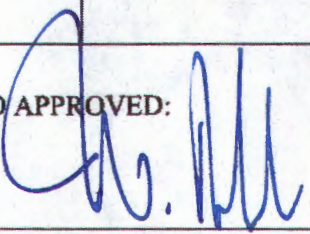
- a. Executive Order 12333;
 - b. the "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency under Section 2.3 of Executive Order 12333;
 - c. Executive Order 13355;
 - d. Executive Order 13470;
 - e. "Title III" (of the Omnibus Crime Control and Safe Streets Act of 1968)
 - f. the Foreign Intelligence Surveillance Court of Review's decision in "In re: Sealed Case No. 02-001."; or
 - g. the Implied Powers of the President under Article II of the Constitution.
6. Defendant will limit its search to (1) records within the Office of the General Counsel and (2) the files of former NSA director General Michael Hayden. However, defendant will make a reasonable effort to follow up on information that suggests the existence of responsive records located elsewhere. Defendant does not believe that this search will be unduly burdensome or significantly interfere with the operation of its automated information systems.
7. The parties have arranged an alternative time frame for processing plaintiff's FOIA request. This agreed-upon alternative time frame is set forth below.
8. Defendant will promptly begin its search for responsive records. Defendant will attempt in good faith to complete its search within six (6) months of approval of this stipulated order, and believes that it will be able to do so.
9. At the end of the six (6) month period, or when the search is complete, whichever occurs sooner, the parties will confer about the timeline for production of any responsive

documents to plaintiff. The parties will then have fourteen (14) days thereafter to update the Court on the status of this matter and enter into an additional stipulation.

10. Defendant may not, and will not seek to, assess any search, processing, or duplication fees associated with plaintiff's FOIA request.
11. Neither party will seek to recover any attorney fees or other litigation costs incurred in the above-captioned action; each party shall bear its own costs, fees, and expenses.
12. FOIA cases are unique in that they are usually resolved through summary judgment proceedings, and discovery is not generally necessary. At this time, the parties do not anticipate that discovery will be necessary in this matter. Therefore, the conference scheduled for July 2, 2018 at 10 am is CONTINUED until further order of the Court.
13. The stipulation approved and entered on June 5, 2018 is VACATED. Defendant's deadline to respond to the Complaint is held in abeyance until further Order of the Court while the parties work to resolve this matter.

<p>WILLIAM M. McSWAIN United States Attorney</p>  <p>Stacey L. B. Smith Assistant United States Attorney 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106 <i>Counsel for the Defendant</i></p> <p>Dated: 6/26/18</p>	<p> Brendan Bernicker 107 Hillside Circle Villanova, PA 19085 bbernicker@gmail.com <i>Plaintiff, pro se</i></p> <p>Dated: 6/26/2018</p>
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SO APPROVED:

 6/27/18
Honorable Wendy Beetlestone
Judge, United States District Court